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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Amendment of Sections 73.606(b),) MM Docket No. 02-_____
Table of Allotments) RM-_____
Television Broadcast Stations)
(Goldfield and Tonopah, NV))

To: Chief, Allocations Branch
Media Bureau

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PETITION FOR RULE MAKING

1. Nevada Channel 3, Inc. ("NC3"), permittee of Station KTVY-TV, Facility ID 86201, Channel 7, Goldfield, Nevada,¹ pursuant to Sections 1.401 and 1.420(i) of the Commission's Rules, hereby requests that the Commission amend Section 73.606(b), the Table of Allotments for analog television stations, to re-allot Channel 7 from Goldfield to Tonopah, Nevada, and to modify the authorization for KTVY-TV to specify operation at Tonopah:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Goldfield	7	---
Tonopah	9	7, 9, *17

2. Channel 7 may be allotted to Tonopah and used at KTVY-TV's existing transmitter site in full compliance with applicable mileage separation requirements to all other analog and digital allotments.² KTVY-TV provides the required principal city coverage of Tonopah from its present

¹ KTVY-TV is currently operating at Goldfield under Program Test Authority and has an application pending for a license to cover construction permit, File No. BLCT-20020411AAM.

² KTVY-TV does not have a paired digital channel. Thus no amendment of Section 73.622 of the Rules is needed or requested in this petition. KTVY-TV will eventually convert to digital operation on its analog channel.

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site. No change in the existing transmitter site is proposed, so no issue is raised regarding gains or loss of reception service to any area or population.

3. Tonopah and Goldfield are geographically too close together to permit Channel 7 to be allotted at both communities as a result of mutual exclusivity. Therefore, NC3's authorization for KTVY-TV may be modified to specify operation at Goldfield without acceptance of any competing expression of interest.

4. The only substantive issue of any kind that requires analysis is whether removal of the only allotment at Goldfield is justified under Section 307(b) of the Communications Act. As discussed *infra*, removal of the allotment is justified because Goldfield is a ghost town, exhibiting no attributes of an independent community capable of supporting a broadcast station. Tonopah is the only community larger than Goldfield where Channel 7 may be utilized in compliance with applicable mileage separation requirements. Therefore, moving the allotment to Tonopah is preferred under Section 307(b) and represents the best, if not the only, chance of KTVY-TV being able to operate as a viable economic enterprise.

Technical Compliance

5. No competing expressions of interest. This petition is filed pursuant to Section 1.420(i) of the Rules, which permits modification of a station's authorization to specify a new community of license without entertaining competing expression of interest where, as here, the proposed allotment is mutually exclusive with the existing allotment. *See Modification of FM and TV Authorizations To Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990) ("*Modification Report and Order*"). The reference points for

Goldfield and Tonopah are only 39.8 km apart,³ which is only a small fraction of the 329.0 km. co-channel separation requirement in Section 73.610(b)(1) of the Rules. Accordingly, mutual exclusivity of the existing and proposed allotments is clearly established.

6. Compliance with allotment technical standards. NC3 does not propose to change the existing transmitter site of KTVY-TV. Operating from that site, KTVY-TV will continue to comply with all applicable mileage separation allotment requirements, as the station is currently not short-spaced to any other NTSC station or allotment.⁴ The KTVY-TV transmitter site is at 38° 03' 05" n. lat., 117° 13' 30" w. lon. (NAD27), only 1.8 km. from the Tonopah community reference point.

Section 307(b) Analysis

7. Priorities. The Commission has established two prerequisites for changing the community of an allotment: (1) that the former community not be deprived of its only existing local transmission service and (2) that the end result be a "preferential arrangement of allotments" under established allotment priorities. *Modification Report and Order*, 4 FCC Rcd at 4874. The priorities are (a) at least one TV reception service to all parts of the United States; (b) at least one

³ The community reference coordinates (NAD27) are:

Goldfield: 37° 42' 30" n. lat., 117° 14' 05" w. lon.

Tonopah: 38° 04' 02" n. lat., 117° 13' 44" w. lon.

⁴ As shown in the channel separation study attached hereto as *Exhibit A*, there are two digital television construction permits, KAIL-DT, Fresno, California (BPCDT-19991101AEF); and KRNVDT, Reno, Nevada (BPCDT-19991029AEE) that show theoretical short spacing to KTVY's analog operations from its current transmitter site. However, both stations indicated in their above-referenced construction permit applications, which have been granted, that the digital facilities comply with all interference protection requirements set forth under Section 73.623(c) of the Commission's Rules. Therefore, because no KTVY transmitter site relocation is being proposed as part of this petition, this channel reallocation complies with all technical requirements.

local television transmission service in each community; (c) a choice of at least two television reception services to all parts of the United States; (d) two local television transmission services for each community; and, (e) other factors, including size of population, geographic location, and number of available reception services. *See Sixth Report and Order*, 41 FCC 148, 167 (1952).

8. Application of Priorities. Because NC3 proposes no change in the transmitter site for KTVY-TV, there will be no change in the reception service available to any area or population. Thus this case involves only transmission services. While the proposal involves the removal of Goldfield's only local transmission service, and appears to request the addition of a second local transmission service at Tonopah, the deletion is nevertheless justified. In actual practice, KTVY-TV will be the only authorized TV station in Tonopah, which is significantly superior to Goldfield under the fifth television allotment priority because of its larger population.

9. No Other Station in Tonopah. While KBMO-TV was at one time authorized to operate as a commercial television station on Channel 9 in Tonopah, the Commission dismissed that station's application for a license to cover construction permit (BLCT-20020222ADG) on March 12, 2002, and deleted the authorization (*see* CDBS record for DKBMO-TV, Facility ID 86643).

Although an application is pending for a construction permit to operate a new noncommercial station on Channel 17 in Tonopah (BPET-19960920KN), no action has yet been taken on that application. Therefore there is currently no authorized full power television broadcast facility, commercial or noncommercial, at Tonopah.

10. Summary of Why Tonopah Is the Preferred Community. Even if the authorization for KBMO-TV is reinstated or a noncommercial station is authorized, re-allotment of Channel 7 to Tonopah is still justified. The Commission has stated its willingness to remove a community's

only local transmission service when circumstances justify it. *Modification Report and Order*, 5 FCC Rcd at 7096. Justification exists here because Goldfield does not possess the attributes of a “community” that the Commission normally requires to make an allotment and which are necessary to provide economic support to a television station. Furthermore, because of the spacing limitations on where Channel 7 may be used, there is no other community superior to Tonopah where Channel 7 could be allotted that would result in a local transmission service to a community with a larger population or a reception service to a greater population. In other words, Tonopah is the best, if not only, community to which KTVY-TV can provide principal city coverage from any transmitter site that would meet the Commission’s mileage separation requirements.⁵

11. History of the Allotment. The Commission first allotted a channel (initially Channel 2) to Goldfield in 1952 as part of the initial allotment table. At that time, with a population of only 629 persons, Goldfield was the smallest community in which an allocation was made. The Report and Order promulgating the initial allotment table did not discuss the attributes of individual communities and so did not address whether Goldfield was a sufficient population center to justify an allotment. *See Amendment of Section 3.606 of the Commission’s Rules*, 41 F.C.C. 148 (1952). The Commission has expressly acknowledged that the 1952 allotments “reflect[ed] the interference avoidance standards, social priorities and range of available technical alternatives in 1952. There is no assumption that all assignments are economically viable.” *Syndicated Program Exclusivity Rules*, 71 F.C.C. 2d 1004, 1007 (1979).

⁵ *Exhibit A* includes a map showing the limited area where a Channel 7 transmitter can be located in compliance with the mileage separation requirements in Section 73.610 of the Rules.

12. History of KTVY-TV. It was not until 45 years later that Goldfield first attracted a *bona fide* application for construction permit, BPCT-19970328KG, filed by Harris Broadcasting Corporation ("Harris"). Even Harris decided not to construct, however; and the construction permit was assigned to NC3 (BAPCT-19990614IA). It has not taken long for NC3 to recognize the problem of Goldfield's small size. NC3 did proceed to construct and put the station on the air. However, as noted above, the transmitter site is nearer to Tonopah than Goldfield;⁶ and Goldfield is so small that NC3 was unable to open up a main studio there and had to ask for a rule waiver.⁷

13. Precedent. In past cases, *e.g.*, *Ardmore, Oklahoma and Sherman, Texas*, 7 FCC Rcd 4846 (1992) ("*Ardmore*"), the Commission has considered removal of a sole local commercial television service to be in the public interest if the following showings can be made:

- (a) No transmitter site change is proposed, so the initial community will continue to receive the same level of reception service from the station as it currently enjoys.⁸

⁶ NC3 constructed at the transmitter site initially authorized to Harris; it did not apply to modify the construction permit.

⁷ In its pending license application, NC3 requested a waiver of the main studio rule to collocate the KTVY-TV main studio with the main in Las Vegas, Nevada, used for commonly controlled stations KNBX-LP and KTVY-LP. NC3 demonstrated that Las Vegas was the best alternative studio location to Goldfield, even over Tonopah, as it was unclear whether any revenues that could be derived from Tonopah would offset the high costs associated with operating a studio for a full power television station. The studio request is not contradictory to this rule making petition, because Tonopah is the best community available for KTVY-TV's community of license given mileage separation constraints, regardless of where the main studio is ultimately located. The only other available community that a station on Channel 7 can serve that has a larger population than Goldfield is Tonopah.

⁸ Although continued reception coverage is not always an absolute requirement to justify a reallocation, as it would require coverage to be provided to the original community "in perpetuity," the FCC considered it in *Ardmore* because the Commission's technical requirements and spectrum usage constrained any significant geographic change in transmitter site -- the same
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- (b) The community to which reallocation is sought has superior “community” attributes, including independent local government; a larger population; and more major employers, businesses, retail sales, and/or schools. The Commission also takes into account the fact that the county to which the station is moving has more television viewers than the county where the previous community was located. *Id.* at 4847.

14. Attributes of Goldfield. The instant case is consistent with past precedent, and the facts are compelling. Goldfield is not even listed in the 1990 United States Census and was estimated to have a population of only 574 people in 2000, according to the Nevada State Demographer (www.nsbdc.org) -- a lesser population than the 629 inhabitants when the initial allotment was made 50 years ago. There is no local government; all government services are provided by Esmeralda County. There are no other economic or civic attributes that indicate Goldfield is a stand-alone community capable of supporting a full power commercial television broadcast station. It is listed as a “ghost town”, *see, e.g.* www.ghosttowns.com, where the primary items of note are abandoned buildings. The Commission has consistently found in the past that the fact that a channel is allotted to a community provides no assurance that the community is be able to support the costs associated with broadcast station construction and operation. *See, Milton S. Maltz*, FCC Rcd (1998) (“Furthermore, the record strongly suggests that Ponce, WSUR’s community of license, lacks the population and economic base to sustain full-service operations. . .”). That description applies to Goldfield even more than Ponce.⁹

(...continued)

situation that prevails for KTVY-TV. *Ardmore* at 4847.

⁹ While the Commission found in *Maltz* that Ponce, Puerto Rico is in a unique geographic region, cut off from most of the other cities, including San Juan, by a mountain range, Ponce has a population of 187,749 people, is the second most populous city in Puerto Rico, and has far more
(continued...)

15. Attributes of Tonopah. Tonopah, in contrast, is listed in the United States Census as having a population in 1990 of 3,616 persons, nearly six times the size of Goldfield. In addition, Esmerelda County, in which Goldfield is located, has only 470 Nielsen DMA television households, compared to 12,879 television households in Nye County, where Tonopah is located. *See 2002 Broadcasting and Cable Yearbook, Stations Volume 2*, at C-52. Tonopah derives income from several sources, including local tourism, a convention center, an historic mining park, and the Central Nevada Museum. There are at least eight hotels, an airport, plans for a future 18 hole golf course, a grocery store, and at least 37 various businesses with offices in Tonopah. (www.tonopah.net). The community has nine churches, a full service hospital, two dentist offices, two elementary schools, one middle school and high school, a satellite community college, and a library. Tonopah has both a Town Manager and a Chamber of Commerce and every year hosts such community events as a Cowboy Poetry Festival, Halloween, New Year's and St. Patrick's parties, a children's fishing derby and a children's Christmas Party. *Id.* Thus it is apparent that Tonopah possesses a number of social, economic and cultural components that are not prevalent in "ghost town" Goldfield. Accordingly, the reallocation of Channel 7 to Tonopah, and a modification of KTVY's authorization to specify Tonopah, which is the largest community that KTVY-TV can serve consistent with mileage separate requirements, while

⁹(...continued)

commercial and economic attributes than Goldfield. *See*, www.welcome.topuertorico.org. If the Commission found that Ponce could not support a stand alone broadcast station, Goldfield, with a dramatically smaller population and virtually no independent attributes, must be found even less able to support a full power broadcast station.

allowing for continued coverage to the community of Goldfield, will best serve the purposes of Section 307(b) of the Communications Act.

Conclusion

16. Recap of Section 307(b) factors. Goldfield is not a “community” that justifies a television broadcast allotment. In contrast, Tonopah does meet the prerequisites for a community and is the only community larger than Goldfield to which KTVY-TV’s channel may be allotted consistent with mileage separation and principal city coverage requirements. NC3 proposes no change in the transmitter site of KTVY-TV, so there will be no loss of reception service to Goldfield. Operation at Tonopah is the best hope that KTVY-TV has to develop a sufficient economic basis for long-term survival.¹⁰ There are no other reasons suggesting that the requested reallocation would not be in the public interest.

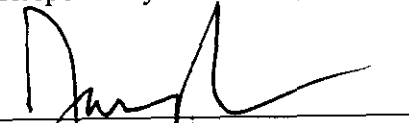
17. Declaration of Intent. If the proposal set forth herein is adopted, NC3 will promptly file the appropriate application to modify KTVY-TV’s license to specify Tonopah as the community of license.¹¹

¹⁰ Tonopah is in the Las Vegas Designated Market Area (“DMA”), while Goldfield is in the Reno DMA. Both Las Vegas and Reno are geographically distant from Goldfield and Tonopah, but assignment to the Las Vegas DMA will enable NC3 to operate KTVY-TV in conjunction with KTVY-LP and KBNX-LP, thereby further enhancing the station’s prospects for economic success.

¹¹ A application on Form 301 for a construction permit will not be required, because no change in physical facilities is proposed.

18. In light of the foregoing, Nevada Channel 3, Inc., respectfully requests that the Commission promptly issue a Notice of Proposed Rule Making looking toward reallocating Channel 7 from Goldfield, Nevada, to Tonopah, Nevada, and modifying the license of KTVY-TV accordingly.

Respectfully submitted,

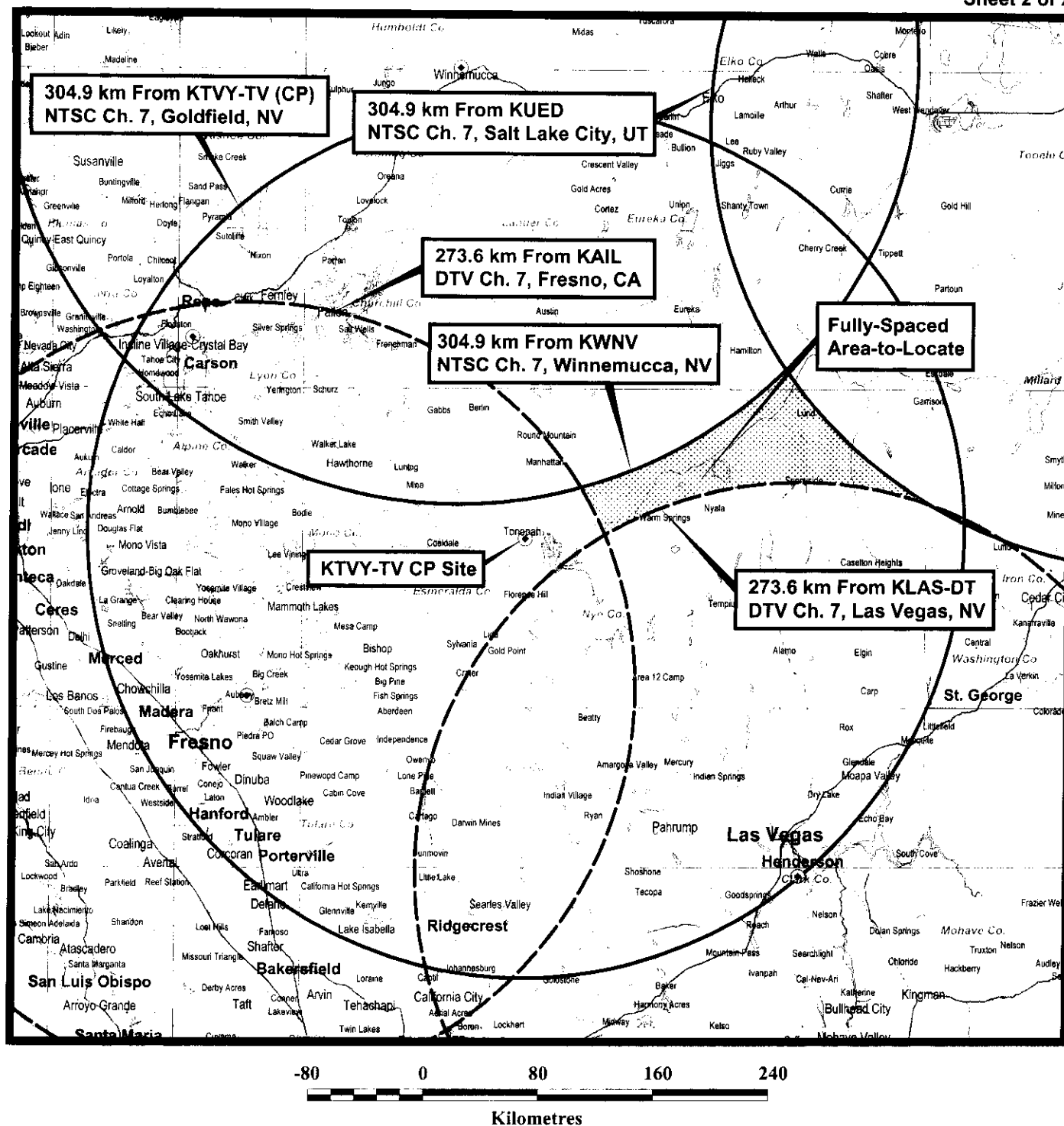
A handwritten signature in black ink, appearing to read 'Peter Tannenwald', is written over a horizontal line.

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Counsel for Nevada Channel 3, Inc.

Dated: August 16, 2002



AREA-TO-LOCATE NTSC CHANNEL 7

CDES TV/DTV SEPARATION STUDY

Job Title: KTVY-TV NTSC Channel 7
Channel: 7
Class:
Type: TV

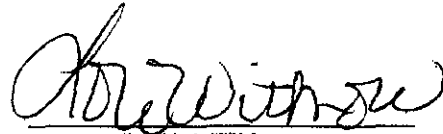
Separation Buffer: 300km
Notes: 380305 1171330
Zone: II

Call Id	City St	File Status	File Num	Channel Zone	ERP HAAT	DA Id	Latitude Longitude	Bear	Dist. (km)	Req. min max
KTVY-T 86201	GOLDFIELD NV CP	BPCT C	19970328KG	7 (-) II	22.900 448	D 20682	38-03-05 117-13-30	90.0	0.0 304.90	304.9 Short
KAIL 67494	FRESNO CA CP	BPCDT C	19991101AE	7 () II	38.000 560	D 29423	37-04-23 119-25-52	241.5	223.1 50.48	273.6 Short
DKAIL	FRESNO CA DTV			7 () II	3.200 581	D	37-04-23 119-25-52	241.5	223.1 50.48	273.6 Short
KRNV 122352	RENO NV APP	BPRM C	20000328AB	7 () II	16.800 857	D 31187	39-18-57 119-53-00	302.2	270.6 3.03	273.6 Short
KRNV 60307	RENO NV CP	BMPCD C	20020207AB	7 () II	16.100 879	N 42499	39-18-57 119-53-02	302.2	270.6 2.99	273.6 Short
KLAS-T 35042	LAS VEGAS NV CP	BPCDT C	20020418AA	7 () II	30.100 609	N 43229	35-56-44 115-02-33	139.7	303.9 30.30	273.6 Clear
DKLAST	LAS VEGAS NV DTV			7 () II	26.400 610	D	35-56-44 115-02-33	139.7	303.9 30.30	273.6 Clear
KLAS-T 35042	LAS VEGAS NV LIC	BLCDT C	20000421AB	7 () II	16.500 598	N 28397	35-56-44 115-02-33	139.7	303.9 30.30	273.6 Clear
KLAS-T 35042	LAS VEGAS NV CP	BMPCD C	20000203AA	7 () II	16.500 598	N 31226	35-56-44 115-02-33	139.7	303.9 30.30	273.6 Clear
KWNV 63846	WINNEMUCCA NV LIC	BLCT C	19980917KF	7 (+) II	0.890 650	N	41-00-41 117-45-59	352.1	331.9 27.01	304.9 Clear
KABC-T 282	LOS ANGELES CA LIC	BLCT C	19840619KF	7 (Z) II	141.000 978	D 19234	34-13-37 118-03-58	190.3	431.1 126.16	304.9 Clear
KGO-TV 34470	SAN FRANCISCO CA LIC	BLCT C	2339	7 (-) II	316.000 509	N	37-45-20 122-27-05	267.5	460.8 155.93	304.9 Clear
KUED 69396	SALT LAKE UT LIC	C BLET C	383	7 (-) II	155.000 924	N	40-36-29 112-09-36	55.3	520.9 215.96	304.9 Clear
KOLO-T 63331	RENO NV LIC	BLCT C	1667	8 (Z) II	166.000 893	N	39-18-49 119-53-00	302.1	270.4 174.74	95.7 Clear
KLAS-T 35042	LAS VEGAS NV LIC	BLCT C	2128	8 (-) II	316.000 610	N 32483	35-56-44 115-02-33	139.7	303.9 208.20	95.7 Clear
KENV 63845	ELKO NV CP	BPCDT C	19991029AE	8 () II	3.100 557	N 29357	40-41-52 115-54-13	20.7	315.1 190.11	125.0 Clear
DKENV	ELKO NV DTV			8 () II	3.200 564	D	40-41-53 115-54-13	20.7	315.1 190.12	125.0 Clear

DECLARATION OF LORI WITHROW

I, Lori M. Withrow, Secretary of Nevada Channel 3, Inc., do hereby declare under penalty of perjury the following:

1) I have reviewed the Petition for Rulemaking attached hereto, and the facts stated therein are true and correct to the best of my knowledge, information and belief.



By: Lori M. Withrow
Secretary

August 14, 2002